

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Solid Waste Financial Assurance
LSA Document #11-454

Overview

This rulemaking amends the financial assurance rules for solid waste land disposal facilities at 329 IAC 10. Past rulemakings for solid waste financial assurance did not include a few federal requirements, which are added in this rulemaking. The rulemaking will add an extra requirement for users of the local government financial test and restricted waste sites financial test, and an option for restricted waste site permittees to propose an alternative financial assurance mechanism.

Suggested Changes since Preliminary Adoption

IDEM's suggested changes since preliminary adoption are as follows:

- 1) 329 IAC 10-39-12 through 329 IAC 10-39-18 were deleted from the preliminarily adopted rule because IDEM would prefer to have the flexibility to change the wording in the financial assurance instruments without using the rulemaking process. This change led to the deletion of language throughout the rule that referenced the forms in these sections.
- 2) The phrase "that are permitted to accept restricted waste criteria Types I, II, and III" was deleted at 329 IAC 10-39-2(a)(5)(A) and 329 IAC 10-39-3(a)(5)(A) because it was deemed an unnecessary addition.
- 3) A new item was added at 329 IAC 10-39-2(a)(5)(B)(iii) to allow permittees to use the restricted waste site financial test even if they do not have bond ratings issued by Standard and Poor's or Fitch's.
- 4) As suggested by a regulated entity, a new item was added at 329 IAC 10-39-2(a)(5)(G) to allow the proposal of an alternative financial assurance mechanism other than those listed in the rule for restricted waste sites.
- 5) Numerous changes were made to wording, listing style, and grammar to make the rule more accurate, consistent, clear, and understandable.

Affected Persons

This rulemaking affects owners, operators, and permittees of solid waste landfills that are required to obtain financial assurance.

Reasons for the Rule

The reasons for the changes to the current rule include:

- 1) The current financial assurance rules have some inconsistencies with the U.S. EPA financial assurance rule at 40 CFR 258, Subpart G and IDEM's hazardous waste

financial assurance rules at 329 IAC 3.1, including an adjustment for inflation of post-closure costs during the post-closure period.

- 2) The current local government financial test and restricted waste site financial test may not be adequate for recent market conditions. By requiring the users of the financial test to meet both the bond ratings and the financial test, the change will provide a more accurate assessment of the permittee's ability to meet the future cost of closure and post-closure.
- 3) IDEM added the proposal of an alternative financial assurance mechanism for restricted waste sites to allow financially solvent permittees to use alternate mechanisms that offer equal or greater financial responsibility.

Economic Impact of the Rule

The estimated economic impact from this rule is not anticipated to exceed \$100,000. The economic impact will derive from permittees that cannot meet the additional requirement in the restricted waste site financial test and local government financial test. If the permittees cannot meet these requirements, they will be required to obtain a different financial assurance mechanism, which includes a trust fund, surety bond, letter-of-credit, insurance, or, for restricted waste sites only, a proposed alternative mechanism.

IDEM estimates that one municipality that operates two landfills will not meet the financial assurance requirements. The exact costs will vary depending on which financial assurance instrument the permittee chooses, the terms offered by the issuing institution of the instrument, and any changes to the closure and post-closure costs when this rule becomes effective.

Scheduled Hearings

First Public Hearing: September 18, 2012, at 1:30 p.m., Conference Center Room A, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana.

Second Public Hearing: March 12, 2014, at 1:30 p.m., Conference Center Room A, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Dan Watts, Rule Development Branch, Office of Legal Counsel, (317) 234-5345, (800) 451-6027 (in Indiana), or dwatts1@idem.in.gov.